

MEMORANDUM

December 13, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: RICHARD K. MASON
Assistant County Counsel
Health Services Division

RE: County of Los Angeles v. Sandra Shewry and State Department of Health Services
LASC No. BS 090939

DATE OF
INCIDENT: April 1999 through January 2003

AUTHORITY
REQUESTED: County would receive approximately \$365,714.

COUNTY
DEPARTMENT: Department of Health Services

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☒

Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY ARMPFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on January 10, 2005

SUMMARY

This is a recommendation to settle a County lawsuit against the State Medi-Cal program which challenges the denial of Treatment Authorization Requests ("TARs"). The proposed settlement would cover the following:

1. A lawsuit pending in the Superior Court. This lawsuit concerns a total of 824 days of care provided to Medi-Cal patients at the LAC+USC Medical Center ("LAC/USC"), Harbor/UCLA Medical Center ("H/UCLA"), and Rancho Los Amigos National Rehabilitation Center ("RLANRC"). The maximum value to the County of this lawsuit is approximately \$950,238.
2. As to LAC/USC, the lawsuit involves 502 acute care days and 34 acute administrative days, with a total of approximately \$606,544 at issue. As to H/UCLA, 255 acute care days, with a total of approximately \$304,725, are at issue. As to RLANRC, 33 acute care days, with a total of approximately \$39,435, are at issue.
3. The lawsuit includes services provided from April 1999 through January 2003.

Under the proposed settlement, the State will process the TARs for 284 acute days and 114 acute administrative days, thus allowing the County to receive reimbursement in the amount of approximately \$365,714. Additionally, the County will be able to claim all 398 of the days in the settlement for purposes of calculating its Disproportionate Share Hospital ("DSH") payments.

LEGAL PRINCIPLES

The Medi-Cal program is obligated to pay for inpatient treatment only to the extent that the hospital has obtained an approved TAR from the Medi-Cal program for each day of the hospital stay. The Medi-Cal program has an obligation to grant a TAR if the patient is entitled to full scope Medi-Cal benefits and there is a showing of medical necessity based upon information in the patient's medical record. Many of the patients whose TARs were denied were undocumented aliens, also known as "OBRA" patients, who are only entitled to Medi-Cal if the care provided constituted emergency services.

SUMMARY OF FACTS

As required by the Medi-Cal program, each County hospital seeks a TAR for each day of inpatient care to a Medi-Cal beneficiary. When a TAR is denied and

the hospital questions the denial, the matter is usually resolved through discussions between hospital personnel and Medi-Cal officials. If not resolved through this informal process, two levels of more formal appeal are available. However, when a dispute cannot be resolved through the appeal process, the only effective method for further challenge is through litigation like this case.

TAR denial litigation is usually not very cost effective to pursue since each day of care is justified by its own particular set of facts and the cost to prove the claim can often exceed its value. Nevertheless, the County Department of Health Services periodically identifies for pursuit through litigation denied TARs where services were provided and where there appears to be a strong basis for questioning the State's denial. The County has filed a number of these cases.

The vast majority of TARs are approved either when initially presented to the State or as the result of informal discussions at the hospital after a denial. Some TAR denials are reversed at the first or second level of appeal. Consequently, TAR denials which are taken to litigation are the ones most difficult to overturn, and their settlement value is relatively low.

This lawsuit challenges denied TARs for 824 days of care at three County hospitals during the period of April 1999 through January 2003. The maximum value to the County for these days of care is approximately \$950,398.

STATUS OF CASE

This case is being settled at an early stage of litigation as the Department, through counsel, has established a practice of entering into negotiations with the State shortly after filing these types of lawsuits. This allows us to resolve the issues without incurring the extensive costs associated with discovery and trial preparation. Unfortunately, the State attorneys have required that we file the litigation before they are willing to enter into settlement negotiations. Also, the State attorneys have recently required that the settlement negotiations be conducted on a patient day by patient day basis, rather than on an overall settlement percentage.

EVALUATION

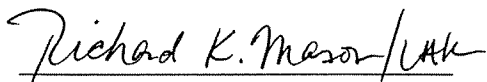
The total settlement amount of approximately \$365,714 is equal to approximately 38.5% of the total amount at issue. Because the TAR denials under review in any litigation are denials which have been upheld through several reviews, they necessarily are denials which will be difficult to overturn.

Additionally, the federal court of appeals has established an extremely narrow definition of "emergency," in the context of determining the scope of services covered under Medicaid for undocumented aliens. If this definition were applied to the claims at issue involving services to undocumented aliens, the court would likely determine that a large percentage of the TARs at issue in the litigation that involve care to undocumented aliens are not covered by Medi-Cal because the services do not meet the definition of "emergency" care.

Additionally, the expense and County resources associated with litigation of these types of cases is significant given the number of TARs involved and the factual dependent nature of the litigation. Therefore, it is believed that the proposed settlement is comparable, if not better, than the County likely would recover if this case was litigated.

We join our private counsel of Foley and Lardner LLP in recommending settlement of this lawsuit. The Department of Health Services, which participated in the settlement discussions, is fully in support of this settlement.

APPROVED:

A handwritten signature in cursive script, reading "Richard K. Mason / RKM", written over a horizontal line.

RICHARD K. MASON
Assistant County Counsel
Health Services Division

RKM:vec